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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,782	02/08/2002	James D. Webb	P-8712.02	2705

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EXAMINER

MALLARI, PATRICIA C

ART UNIT PAPER NUMBER

3736

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/072,782

Applicant(s)

WEBB ET AL.

Examiner

Patricia C. Mallari

Art Unit

3736

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-32.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


MARY BETH JONES
ACTING SUPERVISORY PATENT EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because the applicants' arguments are not persuasive. Initially, the applicants argue that Snell lacks a monitor and that the network programmer 104 of US Patent 6,249,705 to Snell cannot be considered equivalent to the monitor of claims of the instant application because a physician interfaces with the network programmer 104 and information generated by the server 102 is sent back to the network programmer 104. However, the limitations as set forth by the language of claims of the instant application fail to prohibit either the physician from accessing the monitor or from both sending and receiving information to and from the server. The claims of the instant application only recite that the monitor operates to receive the at least one request from the server and transmit the at least one request to the implantable medical device at a second time and that a bi-directional communications system communicatively couples the server and the monitor (see claim 1 in particular). The network programmer 104 accomplishes both of the recited functions of the monitor of the claim, wherein the "request" of claim 1 is "programming commands" as described on lines 2-5 of col. 6 of Snell, and a "bi-directional communications system" shows that the monitor is capable of both sending and receiving information to and from the server. Moreover, since the network programmer 104 obtains the programming commands from the server 102, the server 102 must also have received and stored the programming commands. Therefore, Snell clearly teaches a server operating to receive and store at least one request to modify the behavior of an implantable medical device, a monitor operating to receive the at least one request from the server and transmit the at least request to the implantable medical device at a second time, and a bi-directional communications system communicatively coupling the server and the monitor.

The applicants secondly assert that Snell lacks the ability to transmit such a request. The examiner agrees. However, the examiner modifies the teaching of Snell in view of US Patent No. 6,168,563 to Brown (Brown '563) because Snell fails to articulate the origin of the request, and not because the Snell purportedly lacks an ability to transmit a request. The request in this case is the programming commands on the server 102, wherein the server clearly contains such a request for transmission to the monitor (network programmer) 104 and subsequently transmits the request to the implantable medical device 105 from the monitor (network programmer) 104. Additionally, the applicants state that the ability to make a combination is not a motivation to do so and that a computer messaging, not because Snell lacks an ability to transmit such a request.

With regard to the combination of US Patent No. 6,168,563 to Brown (Brown '563) with Snell, the reference Brown '563 is relied upon to teach that information, such as a request, stored on a server 54 for subsequent transmission to another device 12 may originate from a programmer (computer) 62 (col. 16, line 55-col. 17, line 15 of Brown '563) and that such an origin is not novel. The motivation for combining Brown '563 with Snell is not merely the ability to do so but that the information stored on the server of Snell must have some origin, and that Brown '563 teaches an appropriate origin for information stored on a server.

Regarding the applicants' arguments that safety is not at issue, that relying on Brown '563 to teach authorization codes is the proposal of a modification with the motivation being a means to address a problem created solely by the modification, and that the examiner has failed to indicated the motivation for such a modification. It is presumed that the applicants intend "such a modification" to indicate the reliance on Brown '563 for teaching authorization codes. However, the authorization codes of Brown '563 are part of the communication system described above (col. 16, lines 20-31 of Brown '563) and are not used in a separate combination. The statement that the combination would maintain appropriate safety levels merely points out that the combination of Snell with Brown '563 would further continue in the spirit of the invention of Snell by satisfying Snell's requirement that appropriate security measure and data integrity checks are employed to ensure the validity of data exchanged (col. 7, lines 41-44 of Snell) by monitoring the validity of the origin of such data.